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LOK SABHA

The following Report of the Joint Committee on the Bill to further amend the Banking Companies Act, 1949 was presented to Lok Sabha on the 3rd August, 1959:—

Composition of the Joint Committee

Shri C. R. Pattabhi Raman—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. Osman Ali Khan
3. Shrimati Sangam Laxmi Bai
4. Shri Kailash Pati Sinha
5. Shri Bhola Raut
6. Shri Chandra Shankar
7. Shri Suriya Prasad
8. Shri Liladhar Joshi
9. Shri P. Subbiah Ambalam
10. Shri S. M. Siddiah
11. Shri Hem Raj
12. Shri Harish Chandra Mathur
13. Pandit Krishna Chandra Sharma
14. Seth Achal Singh
15. Shri Raja Ram Misra

16. Shri S. Hansda
17. Shri Prafulla Chandra Borooah
18. Shri Umrao Singh
19. Shri Kamal Krishna Das
20. Shri B. R. Bhagat
21. Shri K. G. Deshmukh
22. Shri V. P. Nayar
23. Shri Chintamani Panigrahi
24. Shri Khushwaqt Rai
25. Shri Motisinh Bahadursinh Thakore
26. Shri Karsandas Parmar
27. Shri Premji R. Assar
28. Shri Prakash Vir Shastri
29. Shri S. M. Banerjee
30. Shri Morarji Desai

Rajya Sabha

31. Shri Tarkeshwar Pande
32. Shri P. S. Rajagopal Naidu
33. Shrimati Sharda Bhargava
34. Shri M. Govinda Reddy
35. Shri Lavji Lakhamshi
36. Shri Mahesh Saran
37. Shri T. D. Pustake
38. Shri Nawab Singh Chauhan
39. Shri V. C. Kesava Rao
40. Shri M. D. Tumpalliwar
41. Dr. Raj Bahadur Gour
42. Shri Rajendra Pratap Sinha
43. Shri Kamta Singh
44. Shri A. Chakradhar
45. Dr. B. Gopala Reddi.

DRAFTSMEN

Shri S. K. Hiranandani, *Joint Secretary and Draftsman,
Ministry of Law.*

Shri V. N. Bhatia, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

Report of the Joint Committee

I, the Chairman of the Joint Committee to which a *Bill further to amend the Banking Companies Act, 1949, was referred, having been authorised to submit the Report on their behalf, present their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 23rd February, 1959. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri B. Gopala Reddi, Minister of Revenue and Civil Expenditure on the 30th April, 1959 and was discussed in the Lok Sabha and adopted on the same day (Appendix I).

3. The Rajya Sabha discussed and concurred in the said motion on the 6th May, 1959.

4. The message from the Rajya Sabha was read out to the Lok Sabha on the 9th May, 1959.

5. The Committee held four sittings in all.

6. The first sitting of the Committee was held on the 9th May, 1959, to draw up a programme of work. The Committee at this sitting decided to hear the evidence of associations, public bodies and individuals desirous of presenting their suggestions or views before the Committee. The Chairman was authorised to decide, after examining the memoranda submitted by them, as to which of the associations, public bodies etc. should be called to tender oral evidence before the Committee.

7. Four memoranda or representations on the Bill were received by the Committee from different associations, public bodies and individuals.

8. At the second sitting of the Committee held on the 13th July, 1959, the Committee heard the evidence tendered by the two associations.

The Committee have decided that the whole of the evidence tendered before them may be laid on the Table of the House.

The Committee have also decided that the memoranda submitted by the associations that tendered evidence before them may be appended to the Evidence volume and laid on the Table of the House.

*Published in Part II, Section 2 of the Gazette of India. Extraordinary dated the 23rd February, 1959.

9. The Committee considered the Bill clause by clause at their third sitting held on the 14th July, 1959.

10. The Committee considered and adopted the Report at their fourth sitting held on the 15th July, 1959.

11. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

12. *Clause 2.—Item (i).*—The Committee feel that the definition of “branch” or “branch office” should, except for the purposes of section 35, be restricted to only such place of business where deposits are received, cheques cashed or moneys lent.

The item has been amended accordingly.

13. *Clause 6.—(1) Sub-clause (a), Item (ii).*—The Committee feel that the Reserve Bank should have power to grant extension upto nine months in suitable cases.

The proviso has been amended accordingly.

(2) *Sub-clause (b).*—The Committee feel that the Reserve Bank should have power to remove any chairman or director or manager or chief executive officer of a banking company, if such person has been found by any tribunal or other authority to have contravened the provisions of any law and the Reserve Bank is satisfied that the association of such person with the banking company is undesirable. The Committee further feel that the Reserve Bank should also have the power to prohibit such person from taking part in the management of any banking company for such period not exceeding 5 years as the Reserve Bank thinks fit.

Sub-clause (b) has accordingly been inserted.

14. *Clause 10.*—The Committee feel that banking companies should be permitted to declare dividends without writing off depreciation, if any, in the value of their investments in shares, debentures and bonds or the losses on account of bad debts, if adequate provision has been made therefor to the satisfaction of the auditor.

The clause has been recast accordingly.

15. *Clause 12.*—The Committee consider that as in the case of opening of Branches, a banking company should obtain the permission of the Reserve Bank before forming a subsidiary for the purpose of carrying on banking business exclusively outside India.

The clause has been recast accordingly.

16. *Clause 13.*—The amendments made are intended to make it clear that clauses (a) and (b) of sub-section (3) of section 22 are also applicable to a banking company which has not yet commenced banking business at the time of the grant of a license.

17. *Clause 14.*—The amendment is of a consequential nature and has been made in order to bring this clause into conformity with the amendments made in Clause 2(i).

18. *Clause 20.*—The Committee consider that in the case of banking companies incorporated in India, the Reserve Bank should have the power to inspect subsidiaries of such companies formed for the purpose of carrying on the business of banking exclusively outside India. Item (ii) of the Explanation has been suitably amended to provide for this.

19. *Clause 33.*—In the opinion of the Committee, the penalty provided in sub-section (4) of section 46 as substituted by this clause is not adequate. The maximum fine has, therefore, been raised from five hundred rupees to two thousand rupees and from fifty rupees to one hundred rupees. The Committee feel that the penalty provided in sub-section (2) of section 46 should be correspondingly enhanced.

The clause has been amended accordingly.

20. *Clause 35.*—The Committee consider that the Reserve Bank should be mentioned in the proposed section 49A of the principal Act since the Reserve Bank also accepts deposits withdrawable by cheques.

Necessary insertion has, therefore, been made in this clause.

21. The Joint Committee recommend that the Bill as amended be passed.

NEW DELHI;
The 15th July, 1959.

C. R. PATTABHI RAMAN,
Chairman,
Joint Committee.

Minute of Dissent

We regret to have to append this Minute of dissent.

At the outset, we must say, that the amending Bill itself is extremely inadequate to enable the Government of India to regulate the banking industry in such a way as to make it function in a manner necessary in a developing economy, with a Socialist Pattern as the goal. The present Bill is a first major amending Bill of its kind seeking to make substantial amendments to the original Bill passed ten years ago i.e. in 1949, when the concept of the role of banking in our economy was different from what it is today. We fail to understand why Government contended themselves in bringing forward a Bill of this kind which does not enable them to control the industry to the extent necessary in the present context. Even as regards the provisions embodied in the Bill, it is clear to us that some at least are retrograde in character and in the interest of the industry and the country ought not to have been embodied. We take the stand and feel fully justified in doing so, having regard to the attitude of the Government in regard to the several amendments which we proposed. We regret that we were unable to convince the majority of our colleagues in the Committee as regards the major amendments which we proposed. We are giving below our views on the more important points arising out of the Bill as also relating to the report.

As regards clause 6 of the Bill we are opposed to the inclusion of Cashier-Contractor in sub-clause (b) of the proviso. Firstly, overwhelming majority of the banks do not employ this Cashier-Contractor. Secondly, the system of employing Cashier-Contractor operates against the interest of the industry and breeds corruption. A Cashier-Contractor, as we understand, is employed by a bank on the basis of commission. He guarantees operational losses to the bank and in return the bank employs his nominees in the cash department. To the best of our knowledge, no operational loss is paid by the Cashier-Contractor from his pocket. On the other hand, it is recovered from the employees by the Cashier-Contractor where he exists and by the bank where he does not. Cashier-Contractor is paid the commission and the employee is to bear the loss. Apart from this unilateral benefit to the Cashier-Contractor, the Cashier-Contractor himself becomes a vehicle of fraud and mal-practices in the bank

concerned. Usually, he is a businessman and by virtue of his being a Cashier-Contractor he commands more influence with the authorities of the bank and their advances. Moreover, the Godown-Keeper as an employee of the Cash Department is a nominee of the Cashier-Contractor and is, therefore, subject to his control. This position is utilised and frauds are committed. It is also reported that bribes are taken by the Cashier-Contractor from the prospective employees. Instead of taking steps to abolish this already dying system the amending Bill is giving a premium to the employment of this Cashier-Contractor.

Sub-Clause (2) of Clause 6 seeks to allow the Contractor of any Banking Company to become a Contractor of any bank registered under Sec. 25 of the Companies Act, 1956. The Banks registered under this section are meant "for promoting commerce, art, science, religion, charity or any other useful object." Even though the profits of these companies are not to be distributed as dividends and are instead intended to be employed in promoting these objects; it is a fact that even these companies do business in order to earn profits. It is, therefore, objectionable that a banking company and such companies under Sec. 25 of the Companies Act be locked together through the same person operating in both. We, therefore, seriously object to this amendment and seek its omission.

Incidentally, while we welcome sub-clause (a) of the proviso that is sought to be added to sub-section (1) of the principal Act (Clause 6 of the Bill), we plead that it be given retrospective effect.

Coming to Clause 10 of the Bill which seeks to amend section 15 of the Principal Act, we feel this is a retrograde step permitting banking companies a greater scope for distributing dividends and bonus shares. A banking company is radically different from an industrial establishment. The shareholders of a banking company hardly own two to three percent of the working capital of the bank. The bulk of the funds on which a banking company operates and which bring so called profits to the banking companies come from the depositors who have no say in the management of the banking company. It is, therefore, imperative that dividends are restricted rather than allowing greater scope for distributing dividends and bonus shares. Moreover, profit of a banking company could go to enhance the liquid reserves of the bank and be utilised for financing our developing economy instead of being distributed to this small group of shareholders. We do not see any reason for enlarging the scope of distributing dividends, when the trend in the country is of rising profits in the banks.

We very strongly feel that this amendment should be rejected by the Houses of Parliament and the issue of bonus shares should be prohibited. We regret that the amending Bill is not only allowing increased dividends for the few but is also seeking to regularise such irregularly distributed dividends in the past through clause 3 of the amending Bill.

Then we come to the amendment which seeks to provide for winding up a banking company. Here, we wish to emphatically point out that a banking company is established only after the Reserve Bank approves its establishment. The Reserve Bank regularly inspects the banking company and guides its operations. We, therefore, fail to understand why the depositors are to unilaterally suffer if a bank is wound up. We, therefore, propose that just as Government and the Reserve Bank have been empowered to permit the establishment of a bank and supervise its operations they should have statutory powers to amalgamate banks working unsatisfactorily sufficiently in time and not allow them to degenerate further and create a ground for their winding up. We insist on this also because at every stage it is the Reserve Bank which exercises control over the banks and which is in know of the things happening in the banks and the depositors are kept all along in the dark. In fact, the depositors are attracted to the bank because of the confidence arising out of the control of the Reserve Bank.

We commend our views to both the Houses of Parliament.

NEW DELHI;
Dated the 15th July, 1959.

S. M. BANERJEE.
V. P. NAYAR.
CHINTAMANI PANIGRAHI.
RAJ BAHADUR GOUR.

Bill No. 12B of 1959

THE BANKING COMPANIES (AMENDMENT) BILL, 1959

(AS AMENDED BY THE JOINT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested
by the Committee; asterisks indicate omissions)

A

BILL

further to amend the Banking Companies Act, 1949.

BE it enacted by Parliament in the Tenth Year of the Republic
of India as follows:—

1. (1) This Act may be called the Banking Companies (Amend-
ment) Act, 1959.

Short title
and com-
mencement

5 (2) It shall come into force on such date as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

10 of 1949.

2. In section 5 of the Banking Companies Act, 1949 (hereinafter
referred to as the principal Act), in sub-section (1),—

Amendment
of section 5.

10 (i) after clause (c), the following clause shall be inserted,
namely:—

15 ‘(cc) “branch” or “branch office”, in relation to a bank-
ing company, means any branch or branch office, whether
called a pay office or sub-pay office or by any other name, at
which deposits are received, cheques cashed or moneys lent,
and for the purposes of section 35 includes any place of
business where any other form of business referred to in sub-
section (1) of section 6 is transacted;’;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) “company” means any company as defined in section 3 of the Companies Act, 1956; and includes a foreign company within the meaning of section 591 of that Act;”;

5 1 of 1956.

(iii) for clause (h), the following clause shall be substituted, namely:—

“(h) “managing director”, in relation to a banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the bank- 10 ing company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by 15 whatever name called;”;

(iv) clauses (i), (k) and (m) shall be omitted;

(v) after clause (n), the following clause shall be inserted, namely:—

“(o) all other words and expressions used herein but 20 not defined and defined in the Companies Act, 1956, shall have the meanings respectively assigned to them in that Act.”.

Insertion of
new section
5A.

Act to over-
ride memo-
randum,
articles, etc.

3. In Part I of the principal Act, after section 5, the following section shall be inserted, namely:—

25

“5A. Save as otherwise expressly provided in this Act,—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, or in any agreement executed by it, or in any resolution passed by the bank- 30 ing company in general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1959; and

(b) any provision contained in the memorandum, articles, 35 agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.”.

Amendment
of section 6.

4. In section 6 of the principal Act, in clause (b) of sub-section (1), for the words “managing agent”, the words “managing agent or 40 secretary and treasurer” shall be substituted.

5. In section 7 of the principal Act, for the proviso, the following proviso shall be substituted, namely:—

Amendment
of section 7.

“Provided that nothing in this section shall apply to—

5 (a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19 whose name indicates that it is a subsidiary of that banking company;

1 of 1956.

10

(b) any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956.”

6. In section 10 of the principal Act,—

Amendment
of section 10.

(a) in sub-section (1),—

(i) in clause (b), for the proviso to sub-clause (ii), the following proviso shall be substituted, namely:—

15

“Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of—

20

(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

25

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or”;

30

(ii) in clause (c), for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) who is a director of any other company not being—

(a) a subsidiary of the banking company, or

1 of 1956.

35

(b) a company registered under section 25 of the Companies Act, 1956:

Provided that the prohibition in this sub-clause shall not apply in respect of any such director for a temporary

period not exceeding three months or such further period not exceeding nine months as the Reserve Bank may allow; or”;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) Where a person holding the office of a chairman or director or manager or chief executive officer (by whatever name called) of a banking company is, or has been found by any tribunal or other authority (other than a criminal court) to have contravened the provision of any law and the Reserve Bank is satisfied that the contravention is of such a nature that the association of such person with the banking company is or will be detrimental to the interests of the banking company or its depositors or otherwise undesirable, the Reserve Bank may make an order that that person shall cease to hold the office with effect from such date as may be specified therein and thereupon that office shall, with effect from the said date, become vacant.

(4) Any order made under sub-section (3) in respect of any person may also provide that he shall not, without the previous permission of the Reserve Bank in writing, in any way, directly or indirectly, be concerned with, or take part in the management of, the banking company or any other banking company for such period not exceeding five years as may be specified in the order.

(5) No order under sub-section (3) shall be made in respect of any person unless he has been given an opportunity of making a representation to the Reserve Bank against the proposed order:

Provided that it shall not be necessary to give any such opportunity if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors.

(6) Any decision or order of the Reserve Bank made under this section shall be final for all purposes.”

7. In section 11 of the principal Act,—

(i) in sub-section (1), for the words “unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by this section”, the words “unless it complies with such of the requirements of this section as are applicable to it” shall be substituted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) In the case of a banking company incorporated outside India—

5 (a) the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of business in the city of Bombay or Calcutta or both, twenty lakhs of rupees; and

10 (b) the banking company shall deposit and keep deposited with the Reserve Bank either in cash or in the form of unencumbered approved securities or partly in cash and partly in the form of such securities an amount which shall not be less than the minimum required by clause (a):

15 Provided that any such banking company may at any time replace—

(i) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, 20 that the total amount deposited is not affected;

(ii) any cash so deposited by unencumbered approved securities of an equal value.”;

(iii) in sub-section (4), the words “the proviso to” shall be omitted;

25 (iv) for sub-section (5), the following sub-section shall be substituted, namely:—

‘(5) For the purposes of this section,—

(a) “place of business” means any office, sub-office, sub-pay office and any place of business at which 30 deposits are received, cheques cashed or moneys lent;

(b) “value” means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.’

8. In section 12 of the principal Act, in sub-section (2), after the 35 words “exercise voting rights”, the words “on poll” shall be inserted. Amendment of section 12.

9. After section 14 of the principal Act, the following section shall be inserted, namely:—

40 “14A. (1) Notwithstanding anything contained in section 6, no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof, unless Insertion of new section 14A.
Prohibition of floating charge on assets.

the creation of such floating charge is certified in writing by the Reserve Bank as not being detrimental to the interests of the depositors of such company.

(2) Any such charge created without obtaining the certificate of the Reserve Bank shall be invalid. 5

(3) Any banking company aggrieved by the refusal of a certificate under sub-section (1) may, within ninety days from the date on which such refusal is communicated to it, appeal to the Central Government.

(4) The decision of the Central Government where an appeal 10 has been preferred to it under sub-section (3) or of the Reserve Bank where no such appeal has been preferred shall be final."

Amendment
of section 15.

10. Section 15 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:— 15

"(2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Act, 1956, a banking company may pay dividends on its shares without writing off— 1 of 1956.

(i) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss; 20

(ii) the depreciation, if any, in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the banking company; 25

(iii) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company." 30

Substitution
of new
sections for
sections 17
and 18.
Reserve
Fund.

11. For sections 17 and 18 of the principal Act, the following sections shall be substituted, namely:—

'17. (1) Every banking company incorporated in India shall create a reserve fund and unless the amount in such fund together with the amount in the share premium account is not less than its paid-up capital, shall, out of the balance of profit of each year as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty per cent. of such profit. 40

(2) Where a banking company appropriates any sum or sums from the reserve fund or the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation:

Provided that the Reserve Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.

18. Every banking company, not being a scheduled bank, shall maintain in India, by way of cash reserve with itself or in current account opened with the Reserve Bank or the State Bank of India or any other bank notified by the Central Government in this behalf or partly in cash with itself and partly in such account or accounts, a sum equivalent to at least two per cent. of its time liabilities in India and five per cent. of its demand liabilities in India, and shall submit to the Reserve Bank before the fifteenth day of every month a return showing the amount so held on Friday of each week of the preceding month with particulars of its time and demand liabilities in India on each such Friday, or, if any such Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

Explanation.—In this section and in section 24, “liabilities in India” shall not include—

(a) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;

(b) any advance taken from the Reserve Bank or from the State Bank of India or from the Refinance Corporation for Industry (Private) Limited, or from any bank notified by the Central Government under clause (c) of the *Explanation* to sub-section (1) of section 42 of the Reserve Bank of India Act, 1934.

12. In section 19 of the principal Act, in sub-section (1), after the words “Reserve Bank,” the words “the carrying on of the business of banking exclusively outside India, or” shall be inserted.

Amendment
of section 19.

13. In section 22 of the principal Act,—

Amendment
of section 22.

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence

issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.”;

(ii) in sub-section (2), in the first proviso, for the words, brackets and figure “sub-section (2)”, the words “this section” 5 shall be substituted;

(iii) in sub-section (3), for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue; 10

(b) that the affairs of the company are not being, or are not likely to be conducted in a manner detrimental to the interests of its present or future depositors;”;

(iv) for sub-sections (4) and (5), the following sub-sections shall be substituted, namely:—

15

“(4) The Reserve Bank may cancel a licence granted to a banking company under this section—

(i) if the company ceases to carry on banking business in India***; or

(ii) if the company at any time fails to comply with 20 any of the conditions imposed upon it under sub-section (1); or

(iii) if at any time, any of the conditions referred to in sub-section (3) is not fulfilled:

Provided that before cancelling a licence under clause 25 (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may 30 specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(5) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section 35 may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

(6) The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of

the Reserve Bank where no such appeal has been preferred shall be final."

14. For section 23 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 23.

5 '23. (1) Without obtaining the prior permission of the Reserve Bank—

Restrictions on opening of new, and transfer of existing, places of business.

10 (a) no banking company shall open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and

15 (b) no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area:

20 Provided that nothing in this sub-section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the banking company already has a place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or a *mela* or any other like occasion.

25 (2) Before granting any permission under this section, the Reserve Bank may require to be satisfied by an inspection under section 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business.

30 (3) The Reserve Bank may grant permission under sub-section (1) subject to such conditions as it may think fit to impose either generally or with reference to any particular case.

35 (4) Where, in the opinion of the Reserve Bank, a banking company has, at any time, failed to comply with any of the conditions imposed on it under this section, the Reserve Bank may, by order in writing and after affording reasonable opportunity to the banking company for showing cause against the action proposed to be taken against it, revoke any permission granted under this section.

(5) For the purposes of this section "place of business" includes any sub-office, pay office, sub-pay office and any place of business at which deposits are received, cheques cashed or moneys lent***.

Amendment
of section
24.

15. In section 24 of the principal Act,—

5

(i) in sub-section (1),—

(a) after the words "shall maintain", the words "in India" shall be inserted;

(b) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

10

'Explanation.—For the purposes of this section, "unencumbered approved securities" of a banking company shall include its approved securities lodged with another institution for an advance or any other credit arrangement to the extent to which such securities have not been drawn against or availed of.;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) In computing the amount for the purposes of sub-section (1), the deposit required under sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated outside India and any balances maintained in India by a banking company in current account with the Reserve Bank or the State Bank of India or with any other bank which may be notified in this behalf by the Central Government, including in the case of a scheduled bank the balance required under section 42 of the Reserve Bank of India Act, 1934, to be so maintained, shall be deemed to be cash maintained in India."

2 of 1934.

(iii) in sub-section (3), after the words "its time and demand liabilities", the words "in India" shall be inserted.

Amendment
of section
25.

16. In section 25 of the principal Act,—

(i) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

"(1) The assets in India of every banking company at the close of business on the last Friday of every quarter or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of the business on the preceding working day, shall not be less than seventy-five per cent. of its demand and time liabilities in India."

26 of 1881.

40

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of business on the last Friday of the previous quarter, or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.”;

5

26 of 1881.

(ii) in sub-section (3), clause (b) shall be re-lettered as clause (c), and the following shall be inserted as clause (b), namely:—

10

‘(b) “liabilities in India” shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;’

15 17. In section 27 of the principal Act, in sub-section (2), for the words “the classification of advances and investments of banking companies in respect of industry, commerce and agriculture”, the words “the investments of a banking company and the classification of its advances in respect of industry, commerce and agriculture” shall be substituted. Amendment of section 27.

18. In section 28 of the principal Act, for the words and figures “under section 27”, the words “under this Act” shall be substituted. Amendment of section 28

19. In section 32 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 32.

25 “(1) Where a banking company in any year furnishes its accounts and balance sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar three copies of such accounts and balance sheet and of the auditor’s report, and where such copies are so sent, it shall not
30 be necessary to file with the registrar, in the case of a public company, copies of the accounts and balance sheet and of the auditor’s report, and, in the case of a private company, copies of the balance sheet and of the auditor’s report as required by sub-section (1) of section 220 of the Companies Act, 1956; and
35 the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section.”.

1 of 1956.

Amendment
of section
35.

20. To section 35 of the principal Act, the following *Explanation* shall be added, namely:—

Explanation.—For the purposes of this section, the expression “banking company” shall include—

(i) in the case of a banking company incorporated outside India, all its branches in India; and

(ii) in the case of a banking company incorporated in India— * *

(a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside India; and 10

(b) all its branches whether situated in India or outside India.

Amendment
of section
35B.

21. In section 35B of the principal Act,—

(i) in clause (a) of sub-section (1), for the words “managing or whole-time director or of a director not liable to retire by rotation”, the words “managing director or any other director, whole-time or otherwise” shall be substituted; 15

(ii) to sub-section (1), the following *Explanation* shall be added, namely:— 20

Explanation.—For the purposes of this sub-section, any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office of the manager or the chief executive officer by whatever name called or the managing director, or any other director, whole-time or otherwise, shall be deemed to be a provision relating to his remuneration.”; 25

(iii) in sub-section (2), for the words, brackets and figures “apply to a banking company after the commencement of the Banking Companies (Amendment) Act, 1956”, the following shall be substituted, namely:— 30 95 of 1956.

“apply to any matter in respect of which the approval of the Reserve Bank has to be obtained under sub-section (1)”. 35

Amendment
of section 36.

22. In section 36 of the principal Act, in clause (b) of sub-section (1), for the figures “45”, the figures and letter “44A” shall be substituted.

23. In PART II of the principal Act, after section 36, the following section shall be inserted, namely:—

Insertion of new section 36 A.

5 “36A. (1) The provisions of section 11, sub-section (1) of section 12, and sections 17, 18, 24 and 25 shall not apply to a banking company—

Certain provisions of the Act not to apply to certain banking companies.

10 (a) which, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959, has been refused a licence under section 22, or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme, or prohibited from accepting deposits by virtue of any alteration made in its memorandum; or

15 (b) whose licence has been cancelled under section 22, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959.

20 (2) Where the Reserve Bank is satisfied that any such banking company as is referred to in sub-section (1) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the Reserve Bank may, by notice published in the Official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act, and thereupon all the provisions of this Act applicable to such banking company shall cease to apply to it, except as respects things

25 done or omitted to be done before such notice.”.

24. Section 36A of the principal Act shall be re-numbered as section 36B.

Amendment of section 36A.

30 25. In section 37 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment of section 37.

35 “(4) Where the Reserve Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made, are being conducted in a manner detrimental to the interests of the depositors, it may make an application to the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.”.

Substitution
of new sec-
tion for sec-
tion 38.

Winding up
by High
Court.

26. For section 38 of the principal Act, the following section shall be substituted, namely:—

“38. (1) Notwithstanding anything contained in section 391, section 392, section 433 and section 583 of the Companies Act, 1956, but without prejudice to its powers under sub-section (1) of section 37 of this Act, the High Court shall order the winding up of a banking company—

(a) if the banking company is unable to pay its debts;
or

(b) if an application for its winding up has been made to by the Reserve Bank under section 37 or this section.

(2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of sub-section (4) of section 35. 15

(3) The Reserve Bank may make an application under this section for the winding up of a banking company—

(a) if the banking company—

(i) has failed to comply with the requirements specified in section 11; or 20

(ii) has by reason of the provisions of section 22 become disentitled to carry on banking business in India; or

(iii) has been prohibited from receiving fresh deposits by an order under clause (a) of sub-section (4) of section 35 or under clause (b) of sub-section (3A) of section 42 of the Reserve Bank of India Act, 1934; or 25 2 of 1934.

(iv) having failed to comply with any requirement of this Act other than the requirements laid down in section 11, has continued such failure, or, having contravened any provision of this Act has continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention has been conveyed to the banking company; 30 or 35

(b) if in the opinion of the Reserve Bank—

(i) a compromise or arrangement sanctioned by

a Court in respect of the banking company cannot be worked satisfactorily with or without modifications; or

(ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or

(iii) the continuance of the banking company is prejudicial to the interests of its depositors.

(4) Without prejudice to the provisions contained in section 434 of the Companies Act, 1956, a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(5) A copy of every application made by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar."

27. In section 39 of the principal Act, for the words and figures "in section 448", the words and figures "in section 448 or section 449" shall be substituted. Amendment of section 39.

28. After section 39 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 39A.

'39A. (1) All the provisions of the Companies Act, 1956, relating to a liquidator, in so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under section 38A or section 39. Application of Companies Act to liquidators.

(2) Any reference to the "official liquidator" in this Part and Part IIIA shall be construed as including a reference to any liquidator of a banking company.'

29. In section 43A of the principal Act, in sub-section (1), after the words "have been made," the words "or adequate provisions to the satisfaction of the High Court for such payments has been made," shall be inserted. Amendment of section 43A.

30. For section 44 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 44.

"44. (1) Notwithstanding anything to the contrary contained in section 484 of the Companies Act, 1956, no banking company may be voluntarily wound up unless the Reserve Bank Powers of High Court in voluntary winding up.

certifies in writing that the company is able to pay in full and its debts to its creditors as they accrue.

(2) The High Court may, in any case where a banking company is being wound up voluntarily, make an order that the voluntary winding up shall continue, but subject to the supervision of the court. 5

(3) Without prejudice to the provisions contained in sections 441 and 521 of the Companies Act, 1956, the High Court may of its own motion and shall on the application of the Reserve Bank, order the winding up of a banking company by the High Court in any of the following cases, namely:— 10

1 of 1956

(a) where the banking company is being wound up voluntarily and at any stage during the voluntary winding up proceedings the company is not able to meet its debts as they accrue; or 15

(b) where the banking company is being wound up voluntarily or is being wound up subject to the supervision of the court and the High Court is satisfied that the voluntary winding up or winding up subject to the supervision of the court cannot be continued without detriment to the interests of the depositors.”. 20

Omission of section 45K.

31. Section 45K of the principal Act shall be omitted.

Amendment of section 45O.

32. In section 45O of the principal Act, in sub-section (2), after the words “accrual of such claims”, the words “or five years from the date of the first appointment of the liquidator, whichever is longer” shall be inserted. 25

Amendment of section 46.

33. In section 46 of the principal Act,—

(i) in sub-section (2), for the words “five hundred rupees”, the words “two thousand rupees” and for the words “fifty rupees”, the words “one hundred rupees” shall be substituted; 30

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) If any other provision of this Act is contravened or if any default is made in complying with any requirement of this Act or of any order, rule or direction made or condition imposed thereunder, every director, liquidator and other officer of the company and any other person who is knowingly a party to the contravention or default shall be punishable with fine which may extend to two thousand rupees, and

where a contravention or default is a continuing one, with a further fine which may extend to one hundred rupees for everyday during which such contravention or default continues.”;

5 (iii) sub-section (5) shall be omitted.

34. In section 49 of the principal Act, for the words, figures, brackets and letters “sections 90, 165 and 255, clauses (a) and (b) of sub-section (1) of section 293 and sections 300 and 416 of the Companies Act, 1956”, the following shall be substituted, namely:—

Amendment of section 49.

10 “sections 90, 165, 182, 204 and 255, clauses (a) and (b) of sub-section (1) of section 293 and sections 300, 384 and 416 of the Companies Act, 1956”.

1 of 1956.

35. After section 49 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new section 49A, 49B and 49C.

15 “49A. No person other than a banking company, the Reserve Bank, the State Bank of India or any other banking institution notified by the Central Government in this behalf shall accept from the public deposits of money withdrawable by cheque:

Restriction on acceptance of deposits withdrawable by cheque

20 Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

1 of 1956. 25 49B. Notwithstanding anything contained in section 21 of the Companies Act, 1956, the Central Government shall not signify its approval to the change of name of any banking company unless the Reserve Bank certifies in writing that it has no objection to such change.

Change of name by a banking company.

1 of 1956. 30 49C. Notwithstanding anything contained in the Companies Act, 1956, no application for the confirmation of the alteration of the memorandum of a banking company shall be maintainable unless the Reserve Bank certifies that there is no objection to such alteration.”.

Alteration memorandum of a banking company.

2 of 1934. 36. In section 42 of the Reserve Bank of India Act, 1934, in the Explanation to sub-section (1), for clause (c), the following clause shall be substituted, namely:—

Amendment of section of the Reserve Bank of India Act, 1934.

35 ‘(c) “liabilities” shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the bank or the amount of any loan taken from the Bank or from the Refinance Corporation for Industry (Private) Limited or from the State Bank or from any other bank notified by the Central Government in this behalf.’.

